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No. 86-502

In The

Supreme Court of the United States

OCTOBER TERM, 1986

CUMBERLAND OIL CORPORATION AND SUGARGROVE, LTD.,

Petitioners,

vs.

JAMES THROPP, GREGORY THROPP, ARROWHEAD GAS PRODUCERS, INC., AND SOUTHERN TIER, INC.,

Respondents.

On Petition For A Writ of Certiorari
To The United States Court of Appeals
For The Second Circuit

PETITIONERS' REPLY BRIEF

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ARGUMENT

PETITIONERS WERE DENIED DUE PROCESS OF LAW BY NOT BEING PERMITTED TO PROFFER THE EXTENSIVE PROOF WHICH EXISTS TO ESTABLISH PROXIMATE CAUSE AND DAMAGES.

Respondents argue that the Court of Appeals for the Second Circuit ruled that petitioners had no claim for fraud under New York law, as they had no proof of proximate cause.

This is not correct.

It is the very heart of petitioners' argument that the Court of Appeals, by affirming summary judgment, actually ruled that even if given the opportunity to present proof petitioners could

not possibly prove damages or proximate cause. (Appendix B-19) The difference is of the utmost constitutional importance. The Court of Appeals simply based its ruling on sheer inference, ignoring, *in toto* (as did the District Court) petitioners' formal request for bifurcation of the issues of liability and damages. (Appendix D-3)

As stated, petitioners made no attempt to establish proximate cause at the pre-trial level, but offered to do so once the other issues of liability were resolved. This was done to accommodate the District Court's oft-stated request of trial lawyers to simplify trial issues, protect the Court's time, proceed in an orderly fashion and avoid unnecessary expense.

As will appear in the Petition for Reargument, petitioners stand ready to offer solid proof to establish those damages which the Court of Appeals has *inferred* do not exist.

The issue before this Court, therefore, is simply whether or not petitioners have been denied due process of law by not having been permitted to proffer the extensive proof which exists to establish proximate cause and very great damage.

In short, does *any* Court by the arbitrary use of inference have the power to so summarily destroy the rights of litigants?

CONCLUSION

FOR THE FOREGOING REASONS, AS WELL AS THOSE WHICH HAVE BEEN URGED IN THE PETITION, CERTIORARI SHOULD BE GRANTED.

Respectfully submitted,

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